

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

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DARREN GILBERT,

Plaintiff,

v.

7-ELEVEN, INC. dba 7-ELEVEN  
#23615; JATINDER BRAR dba 7-  
ELEVEN #23615; JATINDER SINGH  
BRAR dba 7-ELEVEN #23615; I-  
CHUNG HO, Trustee of the HO  
LIVING TRUST dated October 26,  
1991; MIN-CHING HO, Trustee of  
the HO LIVING TRUST dated  
October 26, 1991; and KATHLEEN  
A. HO,

Defendants.

No. 2:21-cv-01984 WBS KJN

MEMORANDUM OF DECISION,  
FINDINGS OF FACT, AND  
CONCLUSIONS OF LAW

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Plaintiff Darren Gilbert brought this action against  
defendant 7-Eleven, Inc.<sup>1</sup> ("7-Eleven") alleging that he

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<sup>1</sup> The parties have stipulated to the dismissal of  
defendants Jatinder Brar and Jatinder Singh Brar, allegedly doing  
business as 7-Eleven #23615; I-Ching Ho and Min-Ching Ho,  
Trustees of the Ho Living Trust; and Kathleen A. Ho. (Docket No.  
52.) Because of the stipulation, 7-Eleven, Inc. is the only

1 encountered certain physical barriers to access when he purchased  
2 items at a 7-Eleven store. He asserts that these barriers and  
3 others present at the store violate the Americans with  
4 Disabilities Act, 42 U.S.C. § 12101 et seq. ("ADA"); the Unruh  
5 Civil Rights Act ("Unruh Act"), Cal. Civ. Code § 51 et seq.; and  
6 Cal. Health & Safety Code § 19955 et seq. (Compl. (Docket No.  
7 1).) The court held a bench trial on plaintiff's claims on  
8 September 26 and 27, 2023. This memorandum constitutes the  
9 court's findings of fact and conclusions of law pursuant to  
10 Federal Rule of Civil Procedure 52(a).

11 I. Findings of Fact

12 1. Gilbert visited 7-Eleven #23615, located at 348  
13 Elkhorn Boulevard in Rio Linda, California ("the Store") on  
14 August 3, 2021 and June 4, 2022.

15 2. The Store is a convenience store which is open to  
16 the public.

17 3. The Store was built in 1983.

18 4. Gilbert lives in Modesto, California.

19 5. Due to infections, Gilbert lost his left leg below  
20 the knee to amputation as well as two toes from his right foot.

21 6. Gilbert prefers to use his prosthetic leg when  
22 ambulating.

23 7. Gilbert uses a wheelchair for mobility when his  
24 condition is such that he cannot easily ambulate with his  
25 prosthetic leg.

26 8. At the times of his visits to the Store in 2021  
27  
28 remaining defendant in the case, and the court uses the term  
"defendant" to refer to 7-Eleven.

1 and 2022, Gilbert could ambulate using his prosthetic leg.

2 9. Gilbert owns a van with a ramp that allows him to  
3 offload into and out of his vehicle while using his wheelchair.

4 10. Gilbert has suffered multiple strokes that affect  
5 his ability to balance and walk, including a series of strokes  
6 between December 2022 and January 2023 which have left him  
7 confined to a wheelchair.

8 11. Gilbert's August 3, 2021 visit to the Store was  
9 made while traveling from his home in Modesto to visit his  
10 father, who lives in Oroville, California.

11 12. Gilbert's June 4, 2022 visit to the Store was made  
12 while traveling to the Aerospace Museum of California, located at  
13 3200 Freedom Park Drive in McClellan, California.

14 13. During Gilbert's August 3, 2021 visit to the  
15 Store, the van accessible parking stall was occupied, and he  
16 parked his van in an adjacent stall.

17 14. During Gilbert's August 3, 2021 visit to the  
18 Store, the designated van accessible parking stall was located  
19 farther from the Store entrance than other, non-accessible  
20 parking stalls.

21 15. During Gilbert's August 3, 2021 visit to the  
22 Store, after parking, he exited his vehicle and, using his  
23 prosthetic leg, walked behind the vehicle parked in the van  
24 accessible parking stall and walked up the sidewalk curb ramp  
25 from the stall access aisle to the sidewalk in front of the  
26 store.

27 16. During Gilbert's August 3, 2021 visit to the  
28 Store, he had some difficulty in walking up the sidewalk curb

1 ramp because of its excessive and uneven slope, due to his  
2 balance issues. Gilbert also was tired because of the "energy"  
3 he had to expend to get into the store.

4 17. Based on a subsequent inspection by plaintiff's  
5 expert, the access aisle next to the designated van-accessible  
6 parking stall measured less than 96 inches in width while the  
7 parking stall measured less than 132 inches in width.

8 18. Based on a subsequent inspection by plaintiff's  
9 expert, the designated accessible parking stall and access aisle  
10 contained slopes over 2.08% and vertical changes in level over  
11 1/4 inch high.

12 19. Based on a subsequent inspection by plaintiff's  
13 expert, the curb ramp contained slopes in excess of 8.33% in the  
14 direction of travel and cross slopes in excess of 2%, and the top  
15 landing of the curb ramp measured less than 48 inches in depth.<sup>2</sup>

16 20. Gilbert's testimony about whether he personally  
17 encountered any barriers during his June 4, 2022 visit to the  
18 Store was vague, ambiguous, and somewhat contradictory.  
19 Accordingly, the court finds that he has failed to meet his  
20 burden of establishing by a preponderance of credible evidence  
21 that he personally encountered any barriers during his June 4,  
22 2022 visit to the Store.

23 21. After the filing of this lawsuit, the parking lot  
24 and entry walkway were remodeled such that the Store now has an  
25 ADA-compliant van accessible parking stall, access aisle, curb

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26 <sup>2</sup> Plaintiff's expert also testified that the entry  
27 walkway was excessively sloped, but plaintiff's proposed findings  
28 of fact do not ask the court to so find, and plaintiff testified  
that he had no problem walking on the sidewalk to the front door.

1 ramp, and entry walkway.

2 22. Gilbert concedes that after remodeling, the van  
3 accessible parking stall, access aisle, curb ramp, and entry  
4 walkway comply with the ADA. Gilbert did not request an  
5 injunction as to these features in his pretrial filings or at  
6 trial.

7 23. During Gilbert's August 3, 2021 visit to the  
8 Store, he did not have any difficulty walking from the top of the  
9 sidewalk curb ramp to the front entrance of the store and did not  
10 have any difficulty entering the store.

11 24. During Gilbert's August 3, 2021 and June 4, 2022  
12 visits to the Store, he used his prosthetic leg and did not use a  
13 cane or a wheelchair or require any assistance.

14 25. During Gilbert's August 3, 2021 visit, his wife  
15 stayed in the car at all times.

16 26. Gilbert did not require the use of a wheelchair  
17 during his August 3, 2021 and June 4, 2022 visits to the Store  
18 and did not show that he wanted to use a wheelchair during either  
19 visit.

20 27. Gilbert testified that he encountered barriers  
21 inside the store due to narrow and/or obstructed aisles and  
22 cluttered counters, but Gilbert has not shown that any of these  
23 alleged barriers were in fact barriers to him as a person who  
24 walks with a prosthetic leg on the days in question. The court  
25 finds his testimony that these issues hindered his access not  
26 credible. The court further finds that these alleged barriers  
27 did not impact his access to the goods and services offered at  
28 the Store on August 3, 2021 or June 4, 2022.

1           28. Gilbert has also identified purported ADA  
2 violations inside the Store based on aisle widths, counter  
3 heights, the entrance doors, a food display, the lottery ticket  
4 kiosk, the fire extinguisher, the condiment counter, and self-  
5 service food and beverage dispensers. Gilbert has not shown that  
6 any of these purported violations constituted barriers to him as  
7 a person with a prosthetic leg. These alleged barriers did not  
8 impact Gilbert's access to the goods and services offered at the  
9 Store on August 3, 2021 and June 4, 2022.

10           29. Gilbert did not alert anyone at the store of the  
11 barriers he encountered or identified and did not expect that any  
12 of those barriers would be remedied after his first visit.

13           30. Gilbert is not a regular patron of the Store.  
14 Gilbert lives more than an hour away from the store and has not  
15 identified any family or friends currently living or working in  
16 the area. Gilbert has no particular reason for visiting Rio  
17 Linda or this store in the future. The Store is not located en  
18 route to any location identified by Gilbert to which he is likely  
19 to travel. Gilbert's current medical condition also hinders his  
20 ability to travel. The court does not find Gilbert's testimony  
21 that he would return to this store if the alleged barriers are  
22 removed to be credible.

23           31. Gilbert has filed approximately 70 ADA lawsuits.

24           32. While Gilbert did purchase items at the Store  
25 during his two visits, the court finds that his primary  
26 motivation for the two visits was to further litigation. The  
27 court does not believe that he would have visited the store on  
28 either day but for his desire to find violations of the ADA and

Unruh Act in order to obtain a settlement or damages.

33. Gilbert has no genuine intent to return to the Store.

34. In plaintiff's proposed Findings of Fact and Conclusions of Law, trial brief, and proposed Judgment, Gilbert does not refer to his third claim for Denial of Full and Equal Access to Public Facilities. Nor did plaintiff provide any evidence or argument on this claim at trial.

B. Conclusions of Law

1. Because Gilbert is substantially limited in his ability to walk, Gilbert is disabled as that term is defined by the Americans with Disabilities Act, 42 U.S.C. § 12101, et seq.

2. As a convenience store, the Store is a place of public accommodation. 42 U.S.C. § 12181(7)(B).

3. 7-Eleven is obligated to make the Store accessible to persons with disabilities. 42 U.S.C. § 12182(b)(1)(A)(i).

4. The Store is subject to the ADA Accessibility Guidelines ("ADAAG"). The Department of Justice ("DOJ") promulgated the ADAAG in 1991 and revised them in 2010. See Kohler v. Flava Enters., 826 F. Supp. 2d 1221, 1229 (S.D. Cal. 2011). All architectural and structural elements in a facility are required to comply with the 1991 Standards to the extent that compliance is readily achievable. By contrast, the 2010 standards apply only to elements that have been altered in existing facilities, or that fail to comply with the 1991 Standards, on or after March 15, 2012. 28 C.F.R. § 36.304(d)(1)-(2).

1           5. Plaintiff has not shown by a preponderance of  
2 credible evidence that any architectural or structural elements  
3 of the Store have been altered since the Store was completed in  
4 1983. Accordingly, defendant is therefore only liable for  
5 architectural barriers that failed to comply with the 1991  
6 Standards. See 28 C.F.R. § 36.304(d)(2)(i). However, because  
7 defendant made architectural modifications to the Store after  
8 plaintiff filed this lawsuit, the court applies the 2010  
9 standards in determining whether those modifications have  
10 remedied the alleged ADA violations. See id.

11           6. At the times Gilbert visited the Store, the Store  
12 failed to provide a van-accessible parking space fully compliant  
13 with the ADA.

14           7. During his visits to the Store, Gilbert personally  
15 encountered a lack of accessible route of travel from the  
16 designated accessible parking to the Store entrance because the  
17 designated accessible parking was not located on the shortest  
18 route to the Store entrance in violation of ADAAG 4.6.2, the curb  
19 ramp contained slopes in excess of 8.33% in the direction of  
20 travel and cross slopes in excess of 2% in violation of ADAAG  
21 4.3.7, and the top landing of the curb ramp measured less than  
22 60" inches in depth in violation of ADAAG 4.8.4.

23           8. Because 7-11 was able to alter its van accessible  
24 parking stall, access aisle, curb ramp, and entry walkway to  
25 comply with the ADA, "there is no genuine dispute that the  
26 changes it implemented were 'readily achievable.'" See Johnson  
27 v. Wayside Prop., Inc., 41 F. Supp. 3d 973, 978 (E.D. Cal. 2014)  
28 (Shubb, J.); see also Wilson v. Pier 1 Imps. (US), Inc., 439 F.



1 Supp. 2d 1054, 1069 (E.D. Cal. 2006) (Karlton, J.) ("Given that  
2 the barrier has already been cured, the court must find that  
3 [removal] was readily achievable, and thus that it violated the  
4 ADA . . . ."). Accordingly, Gilbert has established that 7-  
5 Eleven violated the ADA with regard to the route of travel from  
6 the designated accessible parking to the Store.

7 9. Because Gilbert has established a violation of the  
8 ADA, he has also established a violation of the Unruh Act. Cal.  
9 Civ. Code § 51(f) ("A violation of the right of any individual  
10 under the federal Americans with Disabilities Act of 1990 . . .  
11 shall also constitute a violation of this section.").

12 10. Because the Store now has an ADA-compliant van  
13 accessible parking stall, access aisle, curb ramp, and entry  
14 walkway, his claim for injunctive relief as to those features is  
15 moot. See, e.g., Oliver v. Ralphs Grocery Co., 654 F.3d 903, 905  
16 (9th Cir. 2011).<sup>3</sup>

17 11. Gilbert is also not entitled to an injunction as  
18 to the ADA-compliant van accessible parking stall, access aisle,  
19 curb ramp, and entry walkway because there is no likelihood that  
20 these barriers will recur. See Johnson v. Gallup & Whalen Santa  
21 Maria, No. 17-cv-01191 SI, 2018 WL 2183254, at \*3 (N.D. Cal. May  
22 11, 2018) (quoting Lozano v. C.A. Martinez Family Ltd. P'ship,  
23 129 F. Supp. 3d 967, 971 (S.D. Cal. 2015)) (explaining that  
24 "where defendants would have to undo structural alterations to  
25 violate the ADA," violations could not be reasonably expected to  
26 recur).

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27 <sup>3</sup> Gilbert also does not request an injunction as to  
28 these features.

1           12. Once an ADA plaintiff personally encounters  
2 conditions which interfere with his full and equal access to a  
3 public accommodation, he has standing to seek the removal of all  
4 conditions, even those he did not encounter, that would interfere  
5 with his full and equal access in the future. Chapman v. Pier 1  
6 Imps. (U.S.) Inc., 631 F.3d 939, 944 (9th Cir. 2011).

7           13. However, “[a] plaintiff’s standing to claim an ADA  
8 violation is necessarily linked to the nature of his disability.”  
9 Id. at 947 n.4. “Thus, a blind person would have standing to  
10 assert an ADA violation where a newly constructed multi-story  
11 facility has elevators lacking floor buttons in Braille,” while a  
12 defendant who is not visually impaired would not have standing in  
13 that situation. Id. See also Doran v. 7-Eleven, Inc., 524 F.3d  
14 1034, 1044 n.7 (9th Cir. 2008) (wheelchair user could only  
15 “challenge those barriers that might reasonably affect a  
16 wheelchair user’s full enjoyment of the store,” and did not have  
17 standing to challenge barriers to someone who is blind). Thus, a  
18 plaintiff may not obtain an injunction “if the barriers he seeks  
19 to enjoin do not pose a real and immediate threat to him due to  
20 his particular disability.” Chapman, 631 F.3d at 953.

21           14. There is no indication that the requirements of  
22 ADAAG 4.6.2 and ADAAG 4.3.7, pertaining to the slope of the curb  
23 ramp, were intended to accommodate only wheelchairs to the  
24 exclusion of disabled persons walking with the assistance of  
25 prosthetic legs. Thus, because Gilbert personally encountered  
26 violations of those provisions that relate to his disability, he  
27 has standing to seek an injunction requiring the Store to be made  
28 fully accessible to him, including the remediation of barriers he

1 did not personally encounter.

2 15. However, because none of the purported barriers  
3 inside the store on August 3, 2021 and June 4, 2022 reasonably  
4 affected Gilbert's full enjoyment of the Store as a person with a  
5 prosthetic leg, they did not interfere with his full and equal  
6 access to the Store, and he has no standing to seek injunctive  
7 relief under the ADA as to these barriers. See Chapman, 631 F.3d  
8 at 953.

9 16. Gilbert is also not entitled to an injunction to  
10 any of the purported barriers at the Store because he is unlikely  
11 to return. Chapman, 631 F.3d at 944 (plaintiff lacks standing  
12 "if he is indifferent to returning to the store or his alleged  
13 intent to return is not genuine").

14 17. Because none of the purported barriers inside the  
15 store on August 3, 2021 and June 4, 2022 interfered with his full  
16 and equal access to the Store, he may not recover under  
17 California Civil Code § 55.56 for these barriers.

18 18. Even if a defendant has removed barriers to access  
19 and thereby mooted the plaintiff's ADA claim, those remedial  
20 measures will not moot an Unruh claim for damages. Wayside  
21 Prop., 41 F. Supp. 3d at 980-81 (citing, inter alia, Wilson, 439  
22 F. Supp. 2d at 1069).

23 19. Defendant argues that a plaintiff may not recover  
24 damages under the Unruh Act where, as here, his visit was  
25 motivated primarily by a desire to advance his position in  
26 litigation, citing Thurston v. Omni Hotels Management Corp., 69  
27 Cal. App. 5th 299, 308-9 (4th Dist. 2021); Antoninetti v.  
28 Chipotle Mexican Grill, Inc., 643 F.3d 1165, 1177 (9th Cir.

1 2010); Antoninetti v. Chipotle Mexican Grill, Inc., No. 05CV01660  
2 BTM (WMC), 2012 WL 12845619, at \*5 (S.D. Cal. Mar. 21, 2012).  
3 The court does not read these cases to support defendant's  
4 proposition.

5 Thurston explains that under the Unruh Act, a defendant  
6 must have a "bona fide intent" to use a business's services.  
7 Thurston, 69 Cal. App. 5th at 308-09. However, Thurston involved  
8 an Unruh Act claim by a plaintiff who claimed a hotel's website  
9 was not accessible, but the plaintiff never tried booking a  
10 reservation by using a third-party website or calling the hotel  
11 directly, never looked at any other hotel websites, and never  
12 made any hotel reservation when she searched for a room. The  
13 jury rejected her Unruh Act claim finding, among other things,  
14 that the plaintiff never intended to make a hotel reservation or  
15 ascertain the hotel's prices and accommodations for the purpose  
16 of making a hotel reservation, and the Court of Appeal affirmed.  
17 In contrast, here, there is no dispute that plaintiff actually  
18 purchased items during his visits to the Store, which is direct  
19 evidence of a bona fide intent to use the Store's services, even  
20 if his motivation for using those services was primarily to  
21 establish standing to bring a subsequent lawsuit.

22 The Antoninetti cases,<sup>4</sup> instead of supporting  
23 defendant's position, support Gilbert's claim for damages. As  
24 the Ninth Circuit explained, under the Unruh Act, an individual  
25 must establish that he was denied equal access on a particular  
26

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27 <sup>4</sup> Antoninetti, 2012 WL 12845619, is the district court's  
28 decision on remand from the Ninth Circuit, whose decision is  
found at 643 F.3d 1165.

1 occasion. 643 F.3d at 1177. To do so, the plaintiff complaining  
2 of barriers in a restaurant "must show that he actually presented  
3 himself to the restaurant on a particular occasion, as any other  
4 customer would do, with the intent of being served and to  
5 purchase food in the manner offered and actually encountered  
6 access to the restaurant that was not full and equal." Id.  
7 (cleaned up) (citing Reycraft v. Lee, 177 Cal. App. 4th 1211,  
8 1226 (4th Dist. 2009)).

9 On remand, the trial court held that the plaintiff  
10 encountered barriers and was a bona fide customer on the five  
11 visits he made to the restaurant where he purchased food, and the  
12 plaintiff was thus entitled to damages for each of those five  
13 visits. 2012 WL 12845619, at \*4-7. In contrast, the plaintiff  
14 was not entitled to damages for the three visits he made where he  
15 did not make any purchases and was only gathering evidence for  
16 litigation. Id. at \*4-5.

17 Here, Gilbert presented himself to the Store as any  
18 other customer would, purchased items at the Store as any other  
19 customer would, and encountered access to the Store that was not  
20 full and equal given the parking lot barriers he encountered.  
21 That is all that is required for damages under the Unruh Act. As  
22 the court has found, Gilbert's primary motivation in visiting the  
23 Store was to obtain a settlement or damages from 7-Eleven. If  
24 the Unruh Act permitted a court to deny damages where the primary  
25 motivation is litigation, the court would deny damages here.  
26 However, defendant has cited no case, and the court is unaware of  
27 any, establishing that a plaintiff who makes purchases at the  
28 business as a normal member of the public would may not recover

1 damages simply because the primary motivation for the visit to  
2 business was for litigation purposes.

3 20. A violation of the Unruh Act entitles Gilbert to  
4 mandatory statutory damages of \$4,000 for each occurrence he was  
5 discriminated against. Cal. Civ. Code § 52(a); Jankey v. Lee, 55  
6 Cal. 4th 1038, 1044 (2012).

7 21. Because Gilbert established that there was an ADA  
8 violation during his August 3, 2021 visit to the Store, he is  
9 entitled to \$4,000 in statutory damages under the Unruh Act.

10 22. “[I]n an action alleging multiple claims for the  
11 same construction-related accessibility violation on different  
12 particular occasions, California law requires the trier of fact  
13 to consider the reasonableness of the plaintiff’s conduct in  
14 light of the plaintiff’s obligation, if any, to mitigate  
15 damages.” Wayside Props., 41 F. Supp. 3d at 981 (cleaned up)  
16 (quoting Cal. Civ. Code § 55.56(h)). Relevant to this analysis is  
17 whether the plaintiff alerted the defendant to the barriers he  
18 encountered or whether he expected the barriers to have been  
19 removed after the first visit. Id.

20 23. Because Gilbert did not establish that he  
21 personally encountered any barriers during his June 4, 2022 visit  
22 to the Store, because he has not shown that he mitigated his  
23 damages, and most importantly because he does not appear to  
24 request damages on account of that visit, the court will not  
25 award any damages under the Unruh Act for the June 4, 2022 visit.

26 24. Because plaintiff has no standing under the ADA to  
27 assert his claims regarding features inside the Store and his  
28 claims regarding features outside the Store are moot, the court

1 will enter judgment for defendant 7-Eleven on the ADA claim.

2 25. Because Gilbert has established a violation of the  
3 Unruh Act and is entitled to \$4,000 in statutory damages, the  
4 court will enter judgment for Gilbert on the Unruh Act claim and  
5 award \$4,000 in damages.

6 26. Because Gilbert did not provide any evidence or  
7 argument in support of his third claim for Denial of Full and  
8 Equal Access to Public Facilities during trial, he has not proven  
9 this claim by the preponderance of the evidence, and the court  
10 will enter judgment for defendant on this claim.


11 III. Conclusion

12 For all the foregoing reasons, THE COURT HEREBY FINDS  
13 in favor of plaintiff on his claim against defendant 7-Eleven,  
14 Inc. under the Unruh Act and awards plaintiff \$4,000 against said  
15 defendant. THE COURT FURTHER FINDS in favor of defendants on all  
16 other claims.

17 The Clerk of Court is instructed to enter judgment  
18 accordingly.

19 IT IS SO ORDERED.

20 Dated: October 2, 2023

  
21 WILLIAM B. SHUBB  
22 UNITED STATES DISTRICT JUDGE  
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